IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5866 OF 2006

K.K.Wagh Education Society ...Petitioner
Versus
P.M.Tarle & Ors. ...Respondents

Shri S.M.Sabrad for the Petitioner.
Shri Girish R. Agarwal for the Respondent Nos.5,6 & 8.

CORAM : ABHAY S.OKA, J.
DATED : APRIL 18, 2007.

P.C.:

1. Heard Advocates appearing for the parties. By this Petition under Article 227 of the Constitution of India, the Petitioner original first Defendant has taken an exception to the order dated 05th April, 2006 passed by the trial Court and confirmed by the Appellate Court. The operative part of the judgment and order dated 05th April, 2006 reads thus:

> "2. Defendant No.1 or any other person on behalf of it is hereby restrained from raising construction on the area admeasuring 27 feet in width in between Gat No.1 i.e. suit property as shown in map Exh.3/3/p by red colour, till disposal of this suit".

2. The learned Advocate for the Petitioner on instructions of the Petitioner states that the Petitioner does not intend to carry out construction on

area admeasuring 27 feet in width in respect of which aforesaid order has been passed. He submits that the Respondents may raise objection to construction activity of the Petitioners even if the Petitioners carry out construction activities on their own property excluding the said area of 27 feet in width which is referred to in the aforesaid part of the order.

3. The order of temporary injunction prevents the Petitioner or any person on its behalf from carrying out any construction on area admeasuring 27 feet in width more particularly described in clause No.2 of the operative part of the order dated 05th April, 2006. The said order does not prevent construction by the Petitioner on any other part of the property claimed by the Petitioner. Therefore, the apprehension expressed by the Petitioner is uncalled for as injunction is confined to the area set out in clause No.2 of the order.

4. In view of what is stated above, subject to observations made above, the Petition is rejected. All contentions of the parties in the pending suit are expressly kept open. It is obvious that the trial Court will decide the suit on its own merits without being influenced by the impugned order and confirmation thereof by this Court.

JUDGE